

STATE OF INDIANA)	TIPPECANOE SUPERIOR COURT
) SS:	
COUNTY OF TIPPECANOE)	CAUSE NO. 79D02-_____
CONNIE WEAVER, Ph.D.)	
)	
Plaintiff,)	
)	
VS.)	
)	
TRUSTEES OF)	
PURDUE UNIVERSITY,)	
JEANNIE DICLEMENTI, in her)	
Official Capacity,)	
and CHRISTOPHER AGNEW, in his)	
Official Capacity,)	
)	
Defendants.)	

COMPLAINT FOR INJUNCTIVE RELIEF

For her cause of action against defendants, and each of them, plaintiff Connie Weaver, Ph.D. alleges:

Allegations of Fact

1. Plaintiff Connie Weaver, Ph.D. ("Dr. Weaver") is a Distinguished Professor Emerita at Purdue University ("Purdue"). Dr. Weaver was a member of Purdue's Faculty for approximately 40 years, including serving for 25+ years as the Head of Purdue's Department of Nutrition Science, before retiring in March 2019.

2. Purdue is a public university that has its main campus in West Lafayette, Tippecanoe County, Indiana.

3. Defendant Jeannie DiClementi is the Associate Chair for Protocol Monitoring of Purdue's Institutional Review Board ("IRB"). Dr. DiClementi is sued in her official capacity only.

4. Defendant Christopher Agnew is the Associate Vice President, Research and Regulatory Affairs at Purdue University. In that role, he is responsible for research, regulatory, and compliance oversight involving human participants; research, teaching or testing involving vertebrate animals; chemical, biological and radiological hazards; and development of system-wide policies. Dr. Agnew is sued in his official capacity only.

5. On February 15, 2019, Dr. Weaver and Purdue entered into a written Separation and Release Agreement (the “Agreement”). By its terms, particularly Section 4(b), Section 1(b) the Agreement is confidential and Purdue has not waived the confidentiality of the Agreement. In compliance with Indiana Trial Rule 9.2(F), Dr. Weaver attaches as Exhibit A, and incorporates by reference, a redacted version of the Agreement that conceals Section 1(b).

6. In Section 1(d) of the Agreement, Purdue agreed “to not restrict University faculty, staff or students from collaborating with [Dr. Weaver] on otherwise approved research protocols.

7. In Section 1(f) of the Agreement, Purdue agreed:

to facilitate [Dr. Weaver’s] access to samples, stable isotopes and standards, including but not limited to those associated with Purdue protocol numbers: 1507016227, 1410015308, 1808020960, 1511016780, 1405014899, 131014166, 1705019248, 0502000126, 0506002786, 1607017966, 1606017791, 1809021031, 1806020754, 1211012979, 1812-021437, 1809021088, 1707019399, and 1211012979.

8. In Section 1(f) of the Agreement, Purdue also agreed:

Reasonable access [to the aforementioned samples, stable isotopes and standards] shall be given to Employee upon Employee’s request for access, which should be submitted to Professor Dorothy Teegarden,

College of Health and Human Sciences, Purdue University. In the event Professor Teegarden is unable or unwilling to serve in this capacity, Employee and the University shall agree on another acceptable gatekeeper for access to the materials described in this Section 1(f).

9. Without notifying Dr. Weaver, Purdue unilaterally replaced Dorothy Teegarden as Dr. Weaver's point of contact for access to samples, stable isotopes, and standards. Purdue replaced Dr. Teegarden with Dr. Jessica Huber, without providing Dr. Weaver any advance notice, nor any opportunity to agree on another acceptable gatekeeper for access to the materials described in this Section 1(f)."

10. On July 22, 2019, Dr. Huber sent the following email message to Dr. Weaver, notifying Dr. Weaver that she had replaced Dr. Teegarden and forwarding to her a message that had been sent to the entire Purdue Nutrition Sciences faculty:

From: "Huber, Jessica E" <jhuber@purdue.edu>
Date: 7/22/19 8:07 PM (GMT-06:00)
To: weaverconnie1995 <weaverconnie1995@gmail.com>
Cc: "Underwood, Marion K" <underwm@purdue.edu>, "Klingerman, Trenten D" <klingert@purdue.edu>
Subject: samples and data left after your retirement

Dear Connie,

I wanted to let you know that I sent this to Nutrition Sciences. Can you please let your internal and external collaborators know who I am in case they need assistance? Also, can you copy me on communications related to the data and samples so I can be up to speed on what is going on? I would like to be as proactive as I can be.

Thank you.
Jessica

This email is being sent to all Nutrition faculty, staff, and graduate students.

In my role as ADR, I will be overseeing the data and samples left by Dr. Weaver when she retired. I would be grateful for any information you might have on the samples or data. If you have samples or freezers/refrigerators related to Dr. Weaver's former protocols in your lab, please notify Kim Sagendorf, ksagendorf@purdue.edu, by Friday, July 26.

You may not access these samples or data without my explicit written approval. I am completing my inventory of the samples, including a full assessment of existing authorized uses and viable consented uses of the samples. I will then develop and communicate the processes that will govern any future use of these materials. In general, use of the samples and data will require 1) an approved IRB protocol or exemption, 2) an explanation of which samples will be used and for what analyses, and 3) if the samples are to be used by another institution, a material transfer agreement that has been signed by both Purdue officials and officials of the receiving institution.

Sincerely,
Jessica

Jessica E. Huber, Ph.D.
Purdue University
Professor in Speech, Language, and Hearing Sciences
Associate Dean for Research in the College of Health and Human Sciences
Co-Director of Center for Research on Brain, Behavior, and NeuroRehabilitation (CEREBBRAL)

11. After receiving the above email message from Dr. Huber, Dr. Weaver attempted to schedule a meeting with Dr. Huber to discuss the matter, but Dr. Huber refused to meet with her or even to speak with her by phone.

12. On or about July 31, 2019, Dr. George McCabe, a professor of Statistics at Purdue, submitted a request to use samples from one of Dr. Weaver's studies as part of his own work.

13. In response to Dr. McCabe's request, on or about August 23, 2019, Dr. DiClementi sent a memo to Dr. Agnew. A copy of Dr. DiClementi's memo is attached as Exhibit B and incorporated by reference.

14. In Dr. DiClementi's memo to Dr. Agnew, Dr. DiClementi denied Dr. McCabe's request for access to Dr. Weaver's samples.

15. In the same memo to Dr. Agnew, Dr. DiClementi made the following statement: "I strongly encourage the University to mandate destruction of all materials, samples, data related to Prof Weaver studies in a timely manner to protect human research subjects and the integrity of the University."

16. Neither Dr. DiClementi nor Dr. Huber provided Dr. Weaver with a copy of Dr. DiClementi's August 23, 2019 memo.

17. Dr. Agnew forwarded a copy of Dr. DiClementi's August 23, 2019 memo to Dr. Weaver.

18. Among others, the "materials, samples, [and] data" that Dr. DiClementi "strongly encourages" Purdue to destroy include those associated with the protocol numbers enumerated in Section 1(f) of the Agreement.

19. Indeed, Dr. Weaver's academic research at Purdue was voluminous, and the samples in question fill approximately 30 freezers on Purdue's West Lafayette campus.

20. On September 3, 2019, undersigned counsel for Dr. Weaver contacted Purdue's legal department in hopes of obtaining assurances that the "materials, samples, [and] data" related to all of Dr. Weaver's studies during her decades of

scientific research at Purdue would not be destroyed, but rather that she and other scientists would be allowed continued access to those materials as required by the Agreement.

21. Purdue refused to provide Dr. Weaver with such assurances.

22. Purdue's acts and omissions set forth above constitute material breaches and/or threatened material breaches of the Agreement.

23. Dr. Weaver lacks an adequate remedy at law for Purdue's breaches and/or threatened breaches of the Agreement. Indeed, the materials that Dr. DiClementi "strongly" encourages Purdue to destroy represent decades of academic work that has been relied up on not only by Dr. Weaver, but by other scientists and students at Purdue and at other research universities across the world.

24. Only injunctive relief, in the form of temporary and preliminary orders and a judgment prohibiting Purdue from destroying any of Dr. Weaver's materials, samples, and/or data would prevent both Dr. Weaver and the nutrition science community from suffering irreparable harm.

25. Dr. Weaver anticipates moving promptly for a temporary restraining order and preliminary injunction.

WHEREFORE, Dr. Weaver requests the entry of a permanent injunction prohibiting Purdue and anyone acting on its behalf, including (but not limited to) Dr. Agnew and Dr. DiClementi, from any action, or failure to act, that would directly or indirectly lead to the harm or destruction of any materials, samples, and/or data related to Dr. Weaver's scientific work at Purdue, together with costs of this action and all other just and proper relief.

Respectfully submitted,

/s/ F. Anthony Paganelli

F. Anthony Paganelli (18425-53)
Amber Logsdon (27079-49)
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